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April 26, 2012

**VIA ECF**

The Honorable Joan M. Azrack  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**RE: Reizes v. Penncro  
11 CV 6021 (SLT) (JMA)**

Dear Magistrate Judge Azrack:

I represent the plaintiff in the above referenced matter. This letter motion is to compel the defendant to accept the plaintiff's Rule 26 disclosures as being proper and to respond to the plaintiff's discovery requests as ordered by the Court.

Please allow me to explain. Plaintiff served his Rule 26 disclosures. On April 5, 2012 Mr. Sanders wrote to me as follows:

I am in receipt of plaintiff's Rule 26 Disclosures. It would appear that the disclosures are deficient, as none of the documents or evidence referenced in the disclosures are actually produced.

The Rule 26 Disclosures fail to indicate which of plaintiff's telephone numbers were called by the defendant. The disclosures indicate that plaintiff has documentation concerning the telephone services provided to him, but the documentation was not enclosed with the Rule 26 Disclosures. Similarly, plaintiff refers to recordings, but does not actually append the recordings. Finally, plaintiff refers to bills for telephone service, but does not actually enclose any of the telephone bills.

Since you are away for Pesach, I will await your return before pushing the issue further.

I shall look forward to hearing from you when you return to the United States.

If one reviews F.R.C.P. 26(a)(ii) one can provide a copy or a description. I provided a description of certain documents. Mr. Sanders wants us to provide the telephone numbers and the recordings of messages. The purpose of Rule 26 disclosures is that Mr. Sanders can now request the information in his discovery requests. However, to date and certainly up until the deadline imposed by the Court, Mr. Sanders did not serve any discovery requests. Furthermore, we are not obligated to produce any recordings until we take the deposition of the collectors so that they do not have the recordings to prepare for their deposition.

We contend that our Rule 26 disclosures comply with the Rules. Furthermore, Mr. Sanders has indicated that he will not be responding to our discovery requests until the information he requested is provided. We believe that there is no basis whatsoever to take such a position.

On April 26, 2012 he wrote to the undersigned as follows:

I am in receipt of your correspondence dated April 18<sup>th</sup>, but it is defendant's position that the deadline to answer your pending discovery requests has not yet begun to run. Until such time as you provide adequate Rule 26 Disclosures, discovery cannot commence.

Please advise whether you wish to have this matter addressed with Magistrate Azrack. Defendant is not willing to proceed without obtaining the information referenced in my April 5<sup>th</sup> e-mail correspondence to you on this subject.

Therefore, we request that the Court issue an order deeming the plaintiff's Rule 26 disclosures as being sufficient, and confirm that the parties are to respond to discovery requests by April 30, 2012 as previously ordered by the Court.

Thank you for the Court's consideration of the foregoing.

Yours faithfully,

/s/

Adam J. Fishbein

Cc: Arthur Sanders, Esq.